IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 17047 of 2004

Between:

M/s. Avinash Constructions, rep by Proprietor Sri P.V. Venugopal, 2-4-135,
II Floor, Manovikas Nagar, Sikh Village, Secunderabad

..... PETITIONER

AND

1. AP TRANSCO, rep by Chairman & Managing Director, Vidyut Soudha, Hyderabad.
2 The Chief Engineer (Constructions), APTRANSCO., Vidyut Soudha, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to declare the letter No. CPT/111/M/s. Avinash/D.NO. 571/04 dated 17-09-2004 issued by the 2nd respondent herein as illegal, arbitrary and unjust by issuing appropriate Writ of Mandamus or any other Writ order or direction.

Counsel for the Petitioner:MR.M.V.S.SURESH KUMAR

Counsel for the Respondents: MRs.M.Vinobha Devi

The Court at the stage of admission made the following :

O R D E R:

Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the respondents.

This writ petition is filed seeking a declaration that the letter dated 17-09-2004 issued by the 2nd respondent as arbitrary and illegal.

As can be seen from the material available on record, O.S.Nos.296, 307 and 308 of 2004 on the file of the III Senior Civil Judge, City Civil Court, Secunderabad, have been filed by one P.Gopal Rao against the petitioner seeking decrees for recovery of the amounts alleged to be due from the petitioner. It appears that pending the said suits, the learned Senior Civil Judge passed order dated 12-04-2004 under Order 38 Rule 5 of C.P.C. in I.A.No.569 of 2004 in O.S.No.296 of 2004 issuing prohibitory orders directing the respondents 1 and 2 herein to withhold a sum of Rs.8,60,000/- until further orders from the Court. Similar order was also passed on 15-04-2004 in I.A.No.586 of 2004 in O.S.No.307 of 2004 and I.A. No.587 of 2004 in O.S.No.308 of 2004. The petitioner herein questioned the said orders before this Court in CRP Nos.2239, 2337 and 2260 of 2004. This Court after hearing both the parties allowed the said Revision Petitions by order dated 16-07-2004 and set aside the impugned orders and remanded the matter to the trial Court for fresh consideration. Thereafter, the petitioner made several requests to the respondents to release the amounts to which they are entitled to since the orders of attachment have been set aside. The

said request of the petitioner has been rejected by the 2nd respondent under the impugned letter dated 17-09-2004 stating that though the prohibitory orders are vacated, there are no Court orders directing the respondent-corporation to release the payments and therefore it is not possible to release the payments till the original suits are disposed of. The said letter is challenged in this writ petition.

On behalf of the respondents a counter affidavit has been filed stating that since this Court has remanded the matters to the trial Court for consideration afresh, there is every likelihood of the trial court passing fresh orders, in which event the respondents will not be in a position to comply with the said orders and therefore the amounts cannot be released.

Admittedly, there are no prohibitory orders as on to-day. May be that, this Court directed fresh consideration of the applications filed under Order 38 Rule 5 of C.P.C., but the respondents cannot withhold the amounts due to the petitioner in anticipation of the orders that may be passed by the Civil Court. Even according to the respondents, there is no other objection for releasing the amounts to the petitioner. Under these circumstances, the respondents are not justified in withholding the amounts to which admittedly the petitioner is entitled to.

Accordingly, the writ petition is allowed and the impugned letter dated 17-09-2004 is set aside. No costs.

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30-09-2004.

Mjl/*

To

1. The Chairman & Managing Director, APTRANSCO Vidyut Soudha, Hyderabad.
2. The Chief Engineer (Constructions), APTRANSCO, Vidyut soudha, Hyderabad.
3. 2 CD copies.